

REDACTED VERSION
PURSUANT TO 35-A M.R.S.A. § 704(5)

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-731

November 20, 2003

Appeal of Consumer Assistance Division
Decision #2003-14789 Regarding Northern
Utilities/Investigation Into Accuracy of Meter
Test

ORDER OPENING
INVESTIGATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order we open an investigation into the accuracy of a meter test performed by Northern Utilities, Inc. (Northern Utilities or NU) for customer RMH Properties, Inc. (RMH) concerning an account at a commercial property with multiple tenants owned by RMH in Biddeford, Maine.

II. BACKGROUND

On March 7, 2003, RMH contacted the Commission's Consumer Assistance Division (CAD) about a billing dispute it had been unable to resolve with NU. RMH complained about the high amount of usage appearing on its bills, the accuracy of its bills, and the circumstances surrounding its inability to obtain services from a gas marketer. CAD investigated the matter and obtained information and records from both NU and RMH. CAD issued its decision on September 25, 2003. It found that RMH was responsible for all usage recorded on properly operating meters installed on September 21, 2001 and on March 10, 2003. CAD further found that NU's offer to settle for a payment of [] for the period December 2000 through September 2001 while the meter was inoperable was reasonable, given RMH's usage in the subsequent two years. As of June 2003, RMH owed NU [].¹ Finally, CAD found that NU acted properly in facilitating the transfer of RMH's supply account to a gas marketer. The investigation showed that the account was not transferred due to the actions of the marketer not NU.

On October 2, 2003, RMH appealed CAD's decision to the Commission. RMH asks that it be given an opportunity to present evidence and written argument in support of overturning CAD's decision. In summary, RMH makes five arguments to support its appeal: the wide variance in amounts charged from December 2000 through April 2003 remain unexplained; the meter testing procedures were inadequate; RMH was unable to obtain a gas marketer (and substantial savings) because of NU's erratic billing history; its meter may have been improperly sized; and NU acted unreasonably in handling RMH's complaint.

¹ Total billings (less the adjustment for 2001) were [] and RMH has paid []. Pursuant to Chapter 86 § 6(C), RMH is required to pay the undisputed portion of any bill.

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On November 7, 2003, Northern filed a Motion to Intervene and a Motion for Summary Dismissal claiming that RMH had presented no details to support its claim that the CAD decision was incorrect, or any facts that would entitle it to further relief. On November 11, 2003, RMH submitted the affidavit of the president of RMH and controller of RMH. Counsel also objected to NU's filing of its Motion the day before the Commission's scheduled deliberation on November 12 and requested more time to respond if the Commission planned to consider the issues raised by NU in its Motion.

III. APPEAL PROCESS

Under Chapter 86 § (6), if a non-residential customer is unable to resolve a dispute with a utility concerning its liability for all or any portion of a bill, or concerning disconnection, it may submit the disputed matter to CAD. CAD undertakes an informal investigation of the matter and issues a written decision on the merits. Either the customer or the utility may file a petition seeking Commission review of CAD's decision. The petition must set forth a brief statement of the facts and the basis for the appeal. The Commission then reviews the record and decides, within its discretion, whether to hear the appeal or deny the appeal and affirm CAD's decision. If the petition is granted, the Commission shall hear the appeal and issue a decision affirming, reversing or modifying the decision or remanding to CAD for further action.

IV. DISCUSSION AND DECISION

A. Northern's Motion to Dismiss

We reject Northern's Motion to Dismiss. As pointed out by Northern, whether to hear an appeal of a CAD decision rests within the sound discretion of the Commission. Chapter 86 § (6)(E)(1). Contrary to NU's assertion, RMH has sufficiently set forth a brief statement of facts and the basis for its appeal, as required by Chapter 86. As described below, we reject the grounds for the appeal except for the allegations related to the meter testing. It has raised sufficient factual issues to cause us to investigate further.

B. RMH's Appeal

After reviewing the record, we decide to hear the appeal on one issue: the accuracy of the meter test. As stated in CAD's decision, the Commission's policy is that unless a meter is defective, a customer is responsible for the cost of any utility service once it passes through, and is recorded on, the meter. RMH has raised a number of questions about the accuracy and the manner in which NU conducted the meter test that need to be resolved before we can rely on the results of the test and the usage recorded on the meter. Therefore we direct our Hearing Examiner to establish a process so the parties may be heard on this issue. Both NU and RMH are hereby made parties to the investigation.

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With regard to the other issues raised by RMH, we find that these have been adequately addressed by CAD and we will not investigate them further. In particular we find no evidence that RMH was unable to obtain a gas marketer or that if one was obtained that RMH would have achieved considerable savings. RMH in fact was accepted by a marketer in March of 2003 but the transaction was never completed, because the marketer communicated that RMH was better off with the price offered by NU. We also find no support for the allegation that meter size could affect recoded usage. Finally, we find that NU's billing [] for usage while the meter was not operating from December 2000 to September 2001 was reasonable, particularly given RMH's expectation that heating costs would not exceed [].

Dated at Augusta, Maine, this 20th day of November, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

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NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.